



U.S. Citizenship
and Immigration
Services

✓

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

SEP 09 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she performed at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information acquired by the Immigration and Naturalization Service (the Service) relating to the applicant's claim of employment for Juan Lemus at Ram/Son Contractors.

On appeal, the applicant states that she did work more than 90 days. She explains that she was paid in cash, and therefore has no check stubs. She asserts that all of Mr. Lemus's records have been confiscated, so she has no way of getting further proof.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, provided he is otherwise admissible under section 210(c) of the Act and is not ineligible under 8 C.F.R. § 210.3(d). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

On the Form I-700 application, the applicant claimed to have thinned beets for 100 days for Juan Lemus at Ram/Son Contractors from September 1985 to December 1985.

In support of the claim, the applicant submitted an October 27, 1987 affidavit signed by Jose Ramirez, said to be a labor contractor. The affidavit was not typed on letterhead stationery, but the name Ram/Son Contractor was typed across the top. Mr. [REDACTED] stated that [REDACTED] was the hiring foreman for Ram/Son Contractors, and that no complaints had ever been made about Mr. Lemus in his nine years of service. He indicated that the applicant was indeed employed by that company during the period specified. It is noted that no period was specified on the affidavit. Mr. Lemus also signed the affidavit.

Also submitted at some point was a Form I-705 affidavit signed by Juan Lemus, indicating that the applicant worked as claimed on the application.

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. Specifically, [REDACTED] of Ram/Son Contractors stated that Juan Lemus only worked as a foreman for a total of twenty-six days during the months of October and November of 1985. Furthermore, [REDACTED] bookkeeper for Ram/Son Contractors, stated that their business ended on December 31, 1985 and that no one but herself actually worked in the month of December.

On February 3, 1989 the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. No response was received. The director concluded that the applicant had failed to overcome the adverse evidence, and denied the application. On

appeal, the applicant reiterates her employment claim. She states that she cannot produce further proof because Mr. Lemus's records were confiscated.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. § 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. § 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

According to officials of Ram/Son Contractors, Juan Lemus worked as a foreman for only 26 days during the qualifying period. This information was acquired in part through contact with [REDACTED] whose name appears on the employment reports and farm labor contractor license as the contractor. Although [REDACTED] attested to the applicant's employment, it is not clear that he was an actual contractor. No evidence of that has been furnished, other than his own affidavit, on which the name is shown as Ram/Son Contractor at one point and then Ram/Son Contractors at another. Even if it were to be concluded that the applicant worked at Ram/Son every day in September 1985 as claimed, and the 26 days in October and November that Mr. Lemus could confirm from his 26 days of employment, she could not have accrued 90 days of employment in that three-month period. It is noted that the bookkeeper stated that no agricultural work took place there in December 1985.

The applicant has failed to establish the performance of *at least 90 man-days* of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.